



Government Relations Working Group Government Update

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I. ASSOCIATION UPDATE

Innovative Payments Conference Coming Online in April 2021

The IPA's Innovative Payments Conference is the must-attend annual event for the payments community. Take part in three days of cutting-edge content, discussions and enhanced networking as you engage directly with those leading the way in prepaid compliance, legislation, regulation and innovation.

Stay tuned as we build out the agenda and speaking faculty. We're looking forward to putting on another great event for you. And even better, if you already know you'd like to attend, [subscribe](#) to our updates today so you will be one of the first to hear when our Early Bird rate launches.

The IPC program is designed to keep you ahead of an ever-changing industry and position you to succeed in tomorrow's payments environment. Year after year, the event is an unqualified success, attracting hundreds of attendees from across the country. [Download the brochure](#) today to learn more about what to expect at IPC 2021!

Click [here](#) for additional information.

IPA Podcast: PayPal Sets the Stage for 2021

At the end of 2020, PayPal won an initial victory in its lawsuit against the Consumer Financial Protection Bureau in the U.S. District Court for the District of Columbia. On December 30, Judge Richard Leon granted summary judgment for PayPal on two motions.

In the latest episode of the IPA Payments Pod, Brian Tate, the Innovative Payments Association's CEO, talks about what the decision means for the payments industry. He covers the practical implications for payments companies and the potential regulatory and legislative fallout.

The decision is likely to be appealed, so this likely is only the beginning of a long saga between the industry and regulators. Policy discussions informed by the arguments may play out on a different timetable or in tandem. Either way, the decision sets the stage for a number of conversations around the future of payments regulation.

You can [listen to the episode here](#), or wherever you get your podcasts. Please subscribe and leave us a review on your favorite podcast help to help others find the show.

IPA Financial Crimes Task Force Call

Our first Financial Crimes Task Force Call of 2021 will feature Carolina Bonino and Gretchen Burrier from the FBI's Office of Private Sector (OPS), which provides an organized, coordinated, and horizontal approach to how the FBI engages with the private sector. It serves as the entity within the FBI that has a 360 degree understanding of the FBI's engagement with the private sector—enterprise-wide. Part of the FBI's Intelligence Branch, OPS allows for one “FBI voice” and connects private industry with who they need to connect with—whatever the concern. They will explain how to best contact and work with the FBI to help deal with your company's security concerns.

We are taking a new approach this year to these call. Rather than having a set day and time, we are making the day and time flexible in order to make it easier on our guest presenters. Please register at the link below and share this with any of your colleagues who may be interested.

Please join us on Thursday, January 28, 2021 at 2:00 PM ET. Register [here!](#)

II. AGENCY AND REGULATORY NEWS

PRESIDENTIAL INAUGURATION

Biden-Harris Inauguration

Joe Biden and Kamala Harris were sworn in as President and Vice-President of the United States respectively on Wednesday, January 20, 2021 at 12 PM ET.

In addition, the two newly elected Democratic senators from Georgia, Raphael Warnock and Jon Ossoff, were sworn in this afternoon, officially handing control of the Senate to Democrats. The addition of these two new Democratic senators puts the party makeup of the Senate at 50-50. However, the vice president, who also serves as president of the Senate, becomes the tie breaker, meaning that Democrats now have the majority in the Senate.

CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)

Biden to Nominate Rohit Chopra for CFPB Director

Politico is reporting that President-elect Joe Biden will nominate Rohit Chopra to be the next director of the Consumer Financial Protection Bureau. Mr. Chopra currently serves as a Federal Trade Commissioner and previously served as a CFPB assistant director and as student loan ombudsperson. He is aligned with Sen. Elizabeth Warren (D-MA) and will likely take a more aggressive approach to the position than his predecessors from the Trump Administration.

The full Politico article can be found [here](#).

Ruling Issued in PayPal v. CFPB Case

On December 30, U.S. District Court Judge Richard Leon released his ruling in *PayPal v. CFPB*. Judge Leon wrote in his opinion that the CFPB acted outside of its statutory authority by promulgating mandatory disclosure clauses and substantive restrictions on consumers access to or use of credit linked to prepaid products. Thus, Leon vacated the provisions in the [Prepaid Account Final Rule](#) (Prepaid Rule) related to the short-form disclosure requirement which outlines mandatory disclosure, and the thirty-day credit linking restrictions.

Accordingly, with respect to the disclosure provisions in the Prepaid Rule, Leon stated the Electronic Funds Transfer Act (EFTA) requires providers to disclose the “terms and conditions of electronic fund transfers,” it does not “require that providers adhere to a specific form for these disclosures. Rather, Congress directed the Bureau” to issue *model* clauses for

optional use by financial institutions.” Leon concludes by writing, “the plain text does not permit the Bureau to issue *mandatory* clauses.

Next, Leon begins his discussion of the credit related provisions in the Prepaid Rule by declaring that the “Bureau reads too much into its general rulemaking authority” by highlighting that the “thirty-day credit linking restriction is not merely a disclosure requirement, it is a ban on a consumer’s access to and the use of credit.” Moreover, Leon clearly writes that the “Bureau’s argument that the thirty-day credit linking restriction is permitted because Congress did not expressly prohibit it is, again, meritless.”

Please note that while the disclosure and credit provisions have been struck down by Judge Leon, the rest of the Prepaid Account Final Rule remains in effect. Please also note that according to the Federal Rules of Appellate Procedure, that the CFPB has 60-days to file an appeal in U.S. Court of Appeals – D.C. Circuit. Further, the 60-day timeframe could be extended by any post-judgment motions filed by the CFPB.

The ruling can be accessed [here](#).

CFPB Taskforce on Federal Consumer Financial Law Report

On January 5, the Consumer Financial Protection Bureau’s (Bureau) [Taskforce on Federal Consumer Financial Law](#) (Taskforce) released a report that discusses what it learned during its examination and outreach to stakeholders and offers recommendations on how to improve consumer protection in the financial marketplace. Chartered by the Bureau in January of 2020, the Taskforce was charged with examining ways to harmonize and modernize federal consumer financial laws and given a year to submit a report of their findings and recommendations to the Bureau’s Director. To help inform its work, the Taskforce engaged with external stakeholders, including consumer advocates, the Bureau’s combined advisory boards, state and federal regulators, and industry.

As a reminder, IPA filed a comment letter in May 2020 in response to the Bureau’s [Request for Information \(RFI\)](#) to assist the Taskforce on Federal Consumer Financial Law with recommendations on harmonizing, modernizing, and updating federal consumer financial laws. In brief, the IPA’s comment letter outlines:

- The lack of uniformity in the regulations that similar products are subject to; particularly with the disparate treatment of prepaid account products by the Prepaid Rule with respect to offering overdraft and credit services.
- The long form disclosure that is required by the Prepaid Rule is redundant and that requiring issuers to provide consumers with yet another disclosure unnecessarily increases both industry costs and consumer confusion.
- Facilitating transactions, particularly with respect to making purchases of goods and services and facilitating person-to-person transfers of funds, is a critical function of the banking system and cannot be separated from it without exposing consumers to undue risk of loss and liability, even when such services are provided by "non-banks."

In its report, the Taskforce makes approximately 100 recommendations to the Bureau, Congress, and state and federal regulators to strengthen consumer protection. Among the Taskforce recommendations are the following:

- **Recommendation #37:** The Bureau should expand access to the payment system by unbanked and underbanked consumers and ensure consistent treatment of consumers and similar financial products by applying the same Regulation E rules to consumers using prepaid cards and debit cards. Both types of card issuers should provide the same Regulation E opt-in and just-in-time fee disclosures and allow issuers to apply new funds first to overdraft fees and negative balances.
- **Recommendation #38:** The Federal Reserve and the Bureau should take all reasonable measures to speed up the payments clearance system by updating Regulation CC on expedited funds availability as appropriate to reflect improvements in the technology for faster check clearing. Updates to Reg CC should result in:
 - To the extent reasonably possible and consistent with legitimate concerns about fraud, giving consumers the same prompt access to checks deposited by mobile devices as is required for ATM deposits, and
 - Treating deposits to prepaid accounts the same as deposits to checking accounts.

- **Recommendation #41:** To make disclosures more useful, the disclosures mandated by Congress and the Bureau should consist of only the minimum information consumers need to make an informed decision and to verify they received the product terms promised.
- **Recommendation #74:** Congress should repeal the provision in Section 1075 of the Dodd-Frank Act that imposes price controls on debit card interchange fees due to its adverse impact on access to free or low-fee banking accounts, which have impeded inclusion in the banking system. Repealing Section 1075 would not obviate the application of any other laws, such as antitrust laws, to these markets.
- **Recommendation #78:** Congress should authorize the Bureau to issue licenses to non-depository institutions that provide lending, money transmission, payments services. Licenses should provide that these institutions are governed by the regulations of their home states, even when providing services to consumers located in other states, similar to the National Bank Act's treatment of federally chartered banks. In the alternative, Congress should clarify that the OCC has the authority to issue charters to non-depository institutions engaged in lending, money transmissions, or payments services.
- **Recommendation #79:** The Bureau should consider the benefits and costs of preempting state law in some specific cases in which the potential for conflict can impede provisions of valuable products and services, such as the regulation of FinTech companies engaged in money transmission.

To read the Taskforce Report Volume I click here: https://files.consumerfinance.gov/f/documents/cfpb_taskforce-federal-consumer-financial-law_report-volume-1_2021-01.pdf.

To read the Taskforce Report Volume II click here: https://files.consumerfinance.gov/f/documents/cfpb_taskforce-federal-consumer-financial-law_report-volume-2_2021-01.pdf.

DEPARTMENT OF THE TREASURY/INTERNAL REVENUE SERVICE

Treasury Announces the Issuance of Second Economic Impact Payments by Prepaid Card

On January 7, the Treasury Department and the Internal Revenue Service announced that approximately 8 million second Economic Impact Payments (EIPs) are being sent by prepaid card. Treasury and IRS also note in the release that the form of payment for the second mailed EIP may be different than the first mailed EIP. Some people who received a paper check last time might receive a prepaid debit card this time, and some people who received a prepaid debit card last time may receive a paper check.

Further, EIP Cards are being sent in a white envelope that prominently displays the U.S. Department of the Treasury seal and are being issued to eligible recipients across all 50 states and the District of Columbia. Residents of the western part of the United States are generally more likely to receive an EIP Card. In addition, the release notes that, "EIP Cards are safe, convenient and secure."

The full press release can be found [here](#).

IRS Statement — Update on Economic Impact Payments

On January 11, the IRS released an update related to EIPs that were sent to temporary or closed bank accounts used by third-party tax preparation companies to process tax refunds for certain taxpayers. The update can be accessed [here](#).

IRS Announces 2021 Tax Filing Season Begins Feb. 12; Outlines Steps to Speed Refunds During Pandemic

On January 15, the Internal Revenue Service (IRS) issued a press release announcing that the nation's tax season will start on Friday, February 12, 2021, when the tax agency will begin accepting and processing 2020 tax year returns. The IRS says the February 12 start date for individual tax return filers allows the IRS time to do additional programming and testing of IRS systems following the December 27 tax law changes that provided a second round of Economic Impact Payments and other benefits.

The IRS additionally provided tips for taxpayers to make filing easier and list of key dates in the press release. The release can be accessed [here](#).

OFFICE OF THE COMPTROLLER OF THE CURRENCY (OCC)

Baradaran, Barr Are Leading Contenders for Top OCC Position

Politico is reporting that law professor Mehrsa Baradaran and former Treasury Department official Michael Barr are currently leading contenders to head the Office of the Comptroller of the Currency (OCC). Ms. Baradaran teaches at the University of California at Irvine Law School and is an expert on the racial wealth gap. In addition, she is known for being a postal banking advocate. Mr. Barr is dean of public policy at the University of Michigan and a nonresident senior fellow at the Center for American Progress. He worked as assistant Treasury secretary for financial institutions in 2009 and 2010 and served in the Obama White House before that.

The full Politico article can be found [here](#).

MULTIAGENCY

Draft IPA Comment Letter on Asset Thresholds Interim Rule

The IPA had drafted a comment in response to the FDIC, OCC, and Fed's (Agencies) [Interim Final Rule on Temporary Asset Thresholds](#). In brief, the IPA's comment urges the Agencies to move forward with a final rule but to extend to the time frame for which banks may use their 2019 assets for calculations through 2022 in light of the likelihood of additional stimulus measures to be passed by Congress.

On November 20, the Agencies release the Interim Final Rule, which will allow banks with under \$10 billion in total assets as of December 31, 2019, to use asset data as of that date in order to determine the applicability of various regulatory asset thresholds during calendar years 2020 and 2021. According to the regulators, the rule was released to provide relief to community banking organizations that have experienced rapid and unexpected increases in their sizes due to participation in coronavirus response programs, like PPP, and other lending that supports the U.S. economy.

There is a 60-day comment period that closes on February 1, 2020. The IPA requests that members please review the draft and let Grant Hannah (ghannah@ipa.org) or Brian Tate (btate@ipa.org) know if you have any feedback or questions by January 26. The draft comment was sent out via email on January 20. If you did not receive a copy, please email Grant Hannah.

III. CONGRESSIONAL NEWS

New Senate Banking Chair Highlights Priorities for New Congress

In a discussion with reporters on January 12, incoming Senate Banking Committee chairman Sherrod Brown (D-OH) said he will focus the Committee's work on reinvigorating the Consumer Financial Protection Bureau and extending Covid-19 foreclosure protections and rent relief. He said the CFPB needs, "a director who actually cares about consumers and not the president and the president's big corporate backers and big financial institutions and even payday lenders."

Sen. Brown also said he would focus on the creation of FedAccounts and on how the financial services industry responds to climate change.

Additional information can be found [here](#).

IV. MISC.

None.

V. STATE NEWS

IPA Sending Letter in Opposition to North Dakota Unclaimed Property Bill

The IPA is drafting a letter opposing North Dakota [Senate Bill 2048](#). In brief, the IPA's draft letter expresses concerns about the potential unintended consequences of Section 47-30.2-04 (201) of SB 2048, which would deem payroll cards as presumed abandoned one-year after the amount becomes payable, essentially treating such products as compensation as opposed to treating them as asset accounts, such as demand deposit accounts (DDA), which are presumed abandoned after five years under the bill. The letter further points out that time periods and the disparate treatment of payroll card accounts and DDAs are inconsistent with the Revised Uniform Unclaimed Property Act (RUUPA). Finally, the letter discusses in detail the benefits of payroll card accounts and their similarities with DDAs.

VI. FEDERAL BILLS, AND LAWS

NEW FEDERAL LAWS

None.

PENDING FEDERAL BILLS

None.

The *Government Update* is issued by the Innovative Payments Association twenty times a year as a service to members.

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